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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B5

DATE: JUN 3 0 2011 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner has worked as a vice president of [redacted] since 2006. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and witness statements.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm'r. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/alien employment certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on his own behalf on August 21, 2009. In an accompanying statement, counsel stated: "**Illiquidity is a constant threat to our banking system.** . . . In this bleak economic environment, [the petitioner] singlehandedly continues to retain foreign investor confidence in order to maintain the **inflow of hundreds of millions of dollars to the U.S. economy**" (counsel's emphasis).

Counsel argued at length to establish the intrinsic merit and national scope of international private banking, through which the petitioner seeks to attract "much-needed foreign capital and investment

from ultra high-net-worth and high-net-worth individuals." Counsel contended: "Ultra-high-net-worth Latin American investors single out [the petitioner] . . . with the knowledge and confidence that he has an established history of protecting and managing their wealth," thereby attracting much-needed capital to the United States financial market.

To support these claims, counsel quoted at length from several witness letters in the record. General [redacted] of economy and finance for the [redacted] stated:

> [The petitioner] is well known within the investor community throughout Brazil and Latin America, and his extraordinary ability in structuring financial products attracts multi-million dollar investments to the United States. . . .
>
> [The petitioner] plays a vital role as [redacted], a noted and premier financial institution, where he has facilitated secure, continuous foreign investment and generat[ed] portfolios worth hundreds of millions of dollars. [The petitioner] has attracted, and continues to attract, hundreds of millions of dollars in investment from his elite clientele, while ensuring that all documentation and transactions adhere to U.S. federal security requirements. . . .
>
> [The petitioner] is an individual of extraordinary talent who securely ensures these vital transactions. I have been informed by top executives from [redacted] of [redacted] that [the petitioner] manages over 100 premier relationships and has attracted approximately 40 new relationships because of the reputation he enjoys among Brazilian investors.

[redacted] executive director of Brazilian Executive [redacted] Brazil, stated:

> [The petitioner] is among a handful of individuals who has risen to the top of the finance industry. I believe it is [the petitioner's] reputation that has enabled him to rise to his current level of esteem within the finance industry and throughout investor circles.
>
> [The petitioner's] unique approach to providing proactive solutions to clients and devising wealth management strategies are the key factors that set him apart from other professionals in his field. It is well known within the industry that other private bankers have emulated his practices and techniques. Within the investor community, he is the expert relied upon to foster client relationships, which translates to attracting hundreds of millions of dollars of assets for the U.S. market.
>
> Moreover, [the petitioner's] specialty lies in attracting foreign investors from some of the most strategic markets throughout Brazil. He is one of the rare few

> representatives who has developed these markets, deemed trustworthy by the elite groups he attracts. During one of the world's worst economic climates, [the petitioner] continues to attract and manage hundreds of millions of dollars. This is astounding considering that financial institutions are clamoring to stop the enormous loss of clients who are pulling their money out of the hands of their financial advisors.

The record indicates that [redacted] worked at [redacted] from 1991 to 1995, overlapping with the petitioner's tenure at that same bank from 1993 to 1998.

[redacted] 'an investor and major shareholder of [redacted] stated:

> I support [the petitioner] because of his unmatched and well known reputation within the field. . . .
>
> As Vice President for a [redacted] [the petitioner] specializes in global portfolio coordination. With contacts throughout Latin America, and especially Brazil, [the petitioner] has been able to attract clients who invest hundreds of millions of dollars in the U.S. markets because of his tremendous track record of success. . . . Were it not for him, many of these clients might not invest with a U.S. based bank.

[redacted] vice president and chief operating officer of [redacted] stated:

> [The petitioner] has been a pivotal force for bringing hundreds of millions of dollars in investments to the United States. . . . [T]hese investments have a nationwide impact as they are invested in treasuries and in stocks, thereby bringing capital to U.S. businesses. . . .
>
> As the newspapers around the world have reported, there appears to be no shortage of available workers in this field in the United States because of the layoffs that have taken place; however, there are very few with [the petitioner's] accomplishments. His unique abilities continue to surpass everyone. . . .
>
> [The petitioner's] skills in attracting investment from Latin America for the United States markets are emulated in his institution for developing client relationships and client-base building. I too turn to him for guidance in building formidable client relationships and attracting clientele, particularly from Brazil, which is a targeted region for attracting incoming investment. His network of clients has grown because [he] is consistently recommended by these clients to other investors. His reputation precedes him in these investment circles. Again, in the field, this is the mechanism by which assets are sourced.

[redacted] was previously an executive at [redacted] from 1992 to 2006. The petitioner was a vice president at [redacted] toward the end of that same period.

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. Witness assertions that the petitioner's reputation is common knowledge cannot and do not have the same weight as objective, documentary evidence. The letters, individually and collectively, comprise a set of vague claims that unnamed clients may pull hundreds of millions of dollars out of the United States financial market without the petitioner's continued involvement.

The director denied the petition on October 28, 2009. In the decision, the director stated that the issue was not the intrinsic merit or national scope of the petitioner's occupation, but the significance of this particular petitioner's role within the financial industry.

On appeal, counsel asserts that the petitioner's "duty of confidentiality to his clients" limits the types of evidence available for submission. Counsel argues that the petitioner "submitted testimonial letters by executives highly placed in the field who attested to the fact that his track record is not ordinarily found in the field . . . and he has influenced the way others within the field attempt to attract their own clientele." Even within the boundaries imposed by client confidentiality, supporting evidence ought to exist to support the petitioner's principal claims. For instance, aggregate figures, which identify no clients or specific accounts, could show that the petitioner's arrival at a given bank coincided with a significant increase in assets handled by that bank. The petitioner submitted no such concrete evidence, relying instead solely on the claims of witnesses whom the petitioner himself has selected.

This pattern continues on appeal. Rather than submit any concrete evidence of his impact on international banking, the petitioner relies entirely on witness statements. In his own affidavit, the petitioner asserts "despite the turbulence within our markets, I have maintained my clientele and in fact continue to attract clients from Brazil particularly."

In a new affidavit, [redacted] essentially repeats assertions from his earlier letter.

[redacted] professor emeritus at Portland (Oregon) [redacted] discussed the available evidence and concluded that the petitioner "will serve the national interest to a substantially greater degree tha[n] an available worker having the same minimum level qualifications." [redacted] stated that he based this conclusion on three witness letters, counsel's introductory brief, and an analysis of the beneficiary's educational credentials. [redacted] stated: "I am in no position to authenticate any of these documents. I am forming my professional opinion based on the assumption that the documents are accurate." [redacted] claimed no personal knowledge of the petitioner's reputation in international banking, despite [redacted] prior claim that "[i]t is well known within the industry that other private bankers have emulated his practices and techniques." [redacted] letter amounts to a discussion of previously submitted evidence, and adds nothing new of substance to the record.

Counsel claims, on appeal, that the alien employment certification process would not be appropriate because a prospective employer cannot specify that it requires "[t]he expertise needed to combat current economic problems and to aid U.S. financial institutions." The petitioner states that "it is impossible to advertise, through the labor certification process, for the experience, established relationships and reputation that I possess." As of the writing of this decision, the question of whether the petitioner could obtain permanent immigration benefits through the standard job offer requirements is no longer hypothetical.

The record shows that [redacted], seeking to employ the alien as its senior executive vice president, applied for alien employment certification on the alien's behalf on August 23, 2010. The Department of Labor approved that application on January 5, 2011. The intending employer filed its own petition on the alien's behalf on January 27, 2011, seeking to classify the alien as a member of the professions holding an advanced degree. The director approved that petition on February 22, 2011. Thus, the entire process, from filing the application for alien employment certification to approval of the petition, took just under six months. The fairly rapid processing and outcome of the new petition prove that the alien's position was readily amenable to alien employment certification. The petitioner filed a Form I-485 adjustment application on March 24, 2011, which is currently pending.

According to the most recent Department of State Visa Bulletin, visa numbers are current in the petitioner's classification and for the petitioner's country of origin.[1] With no backlog in visa numbers, there is no advantage to pursuing a 2009 priority date instead of a 2011 priority date. Any such change would neither expedite processing of the petitioner's adjustment application, nor improve the chances of its approval.

Given the approval of alien employment certification, and a new petition, on the petitioner's behalf, at this point the petitioner seeks an exemption from a requirement that he has already met. Between

the approval of a petition with alien employment certification, and the absence of documentary evidence to support the petitioner's claims, the petitioner has not shown that a waiver of the job offer requirement would be in the national interest of the United States.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.